Supreme Court U.S.
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No. 01-270

In the Supreme Court of the United States

YELLOW TRANSPORTATION, INC.,

Petitioner,

v.

MICHIGAN, ET AL.,

Respondents.

On Writ of Certiorari to the Michigan Supreme Court

JOINT APPENDIX

JOHN W. BRYANT
Counsel of Record
R. IAN HUNTER
NEILL T. RIDDELL
Dean & Fulkerson
801 W. Big Beaver Road,
Fifth Floor
Troy, MI 48084
(248) 362-1300

CHARLES A. ROTHFELD
EVAN M. TAGER
ROBERT L. BRONSTON
Mayer, Brown, Rowe & Maw
1909 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000

Counsel for Petitioner

JENNIFER M. GRANHOLM
ATTORNEY GENERAL OF MICHIGAN

THOMAS L. CASEY
Solicitor General of Michigan
Counsel of Record
P.O. Box 30212
Lansing, Michigan 48909
(517) 373-1124

DAVID A. VOGES
HENRY J. BOYNTON
Assistant Attorneys General

Counsel for Respondents

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RELEVANT DOCKET ENTRIES IN THE MICHIGAN COURT OF CLAIMS, No. 95-15706-CM

No.	Date	General Description
1	03/27/1995	Complaint
31	10/10/1995	Defendants' Motion for Summary Disposition with accompanying Affidavit of Thomas R. Lonergan
35	10/25/1995	Plaintiff's Motion for Summary Disposition
38	10/25/1995	Brief in Support of Plaintiff's Motion for Summary Disposition
39	10/25/1995	Affidavit of Joe McDade in Support of Plaintiff's Motion for Summary Disposition
42	11/08/1995	Defendants' Response to Plaintiff's Motion for Summary Disposition
43	11/08/1995	Plaintiff's Response to Defendants' Motion for Summary Disposition
44	11/08/1995	Brief in Opposition to Defendants' Motion for Summary Disposition
51	01/12/1996	Supplemental Affidavit of Joe McDade in Support of Plaintiff's Motion for Summary Disposition

No.	Date	General Description
53	03/14/1996	Opinion and Order
67	04/17/1996	Order Staying Proceedings to Enforce Orders or Judgment
68	04/17/1996	Judgment
69	04/29/1996	Notice of Appeal

RELEVANT DOCKET ENTRIES IN THE MICHIGAN COURT OF APPEALS, No. 194703-Z

No.	Date	General Description
14	09/04/1996	Appellant's Brief
21	11/05/1996	Appellee's Brief
35	08/14/1998	Opinion of the Court
36	08/14/1998	Opinion Concurring in Part and Dissenting in Part

RELEVANT DOCKET ENTRIES IN THE MICHIGAN SUPREME COURT, No. 113656

No.	Date	General Description
1	12/09/1998	Application for Leave to Appeal
2	01/05/1999	Brief in Opposition for Leave to Appeal
5	04/19/2000	Leave to Appeal Granted
6	06/14/2000	Appellant's Brief and Appendix
7	07/20/2000	Appellee's Brief and Appendix
9	05/15/2001	Opinion of the Court
10	06/06/2001	Order of the Court

AFFIDAVIT OF THOMAS R. LONERGAN

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

I, Thomas R. Lonergan, having been duly sworn and deposes state as follows:

1. I am presently and was at all times pertinent to the above action, employed by the Michigan Public Service Commission in the capacity as Director of the Motor Carrier Regulation Division.

2. I have personally reviewed the Plaintiff's Complaint filed in the above action and am familiar with the contents of same.

3. Contrary to the factual allegations contained in Plaintiff's Complaint the following is a true and accurate description of the events which are the subject of the Plaintiff's Complaint:

a. Prior to 1988 the Michigan Public Service Commission had reciprocity agreements with several states and provinces pertaining to fees for trucks in interstate commerce.

b. 347 Public Act 1988 amended the Motor Carrier Act and established a new requirement that the Michigan Public Service Commission begin charging regulatory fees for vehicles of interstate, foreign and interstate exempt motor carriers operated in Michigan.

c. 347 Public Act 1988 was amended by 221 Public Act 1989.

d. Until that time, the State of Michigan had not issued cab card stamps to interstate, foreign and interstate exempt motor carriers.

e. Commencing in the fall of 1989 for the calendar year beginning January 1, 1990, the Michigan Public Service Commission began issuing cab card stamps, commonly referred to as "bingo stamps."

f. Under the above act, Michigan was required to charge vehicles from other states $10.00 for the stamp. However, the act permitted the Commission to enter into reciprocal agreements with other states or provinces of Canada that did not charge vehicles licensed in this state regulatory fees, permitting the waiving of $10.00 fees to vehicles licensed in those provinces or states.

g. On August 2, 1989 Chairman William Long sent a letter to all states and provinces canceling any previous reciprocity agreements.

h. For purposes of the new act, the Michigan Public Service Commission Staff contacted other states and provinces to determine if they were in fact charging a fee to Michigan vehicles.

i. The Public Service Commission made a policy decision not to charge a fee to carriers with vehicles registered in states or provinces which did not charge Michigan-based carriers a fee.

j. Under the above-described system, Yellow Freight which had 3,730 vehicles base plated in Illinois and Indiana, was not charged for those cab card stamps as those states did not charge fees for vehicles based in Michigan. Yellow Freight was charged for five vehicles which were base plated in Oklahoma. (Attachment 1). This system was in effect for calendar years 1990 and 1991.

k. After two years of administration of the cab card stamp program using the system of determining fees and reciprocity waiver based on the state of vehicle registration, it

became evident that this system was unduly complex and inefficient to administer. A cab card application could include vehicle registrations in many different states requiring several calculations and the possibility of error in reciprocity waivers. It also became apparent that Michigan was one of very few, and possibly the only, state using this system as opposed to the principal place of business system. Further, work was proceeding on legislation in Washington to mandate a single base state program and this would require a uniform approach by the participating states.

l. The Public Service Commission made a policy decision in 1991 to change to a system utilizing the principal place of business as the basis for fees and reciprocity. This decision was made in early 1991 and the revised renewal applications were mailed to all interstate motor carriers in September of 1991. This clearly pre-dated the effective date for freezing fees and reciprocity, being November 15, 1991.

m. The above changes are reflected in the attached cab stamp application forms. Attachment No. 1 is the renewal for the 1991 cab stamps and indicates in paragraph 8 that the fee schedule is based on the fee charged by the state in which the company's vehicles are commercially base plated. Attachment No. 2 is the renewal form mailed and used in 1991 for the 1992 registration year. This form states that the fee schedule is based on the state or province in which the company is based.

n. Thus, no reciprocity agreements were changed. Rather, for efficiency reasons and to be in compliance with the SSRS the MPSC based reciprocity on the state in which a company was located rather than the states in which the vehicles were base plated.

o. Under the "base plating" system Yellow Freight, with a substantial number of trucks base plated in the states of

Illinois and Indiana, did not pay fees due to reciprocity arrangements with those states.

p. After the system was changed basing reciprocity on a company's principal place of business, Yellow Freight had to pay fees as its principal place of business was in Kansas. Michigan had no fee waiver with the State of Kansas. Other motor carriers would have paid less as a result of the change if they were based in a state with which Michigan had a fee waiver.

q. 49 U.S.C. § 11506 sets forth the fee systems and states in part:

> Will result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle, that such state collected or charged as of *November 15, 1991*;

Pursuant to the above, it was determined that fees would be based on fees collected and charged as of November 15, 1991.

r. In the instance of Yellow Freight that fee was based on the fees charged and collected as of November 15, 1991. (See Exhibit 2). The application form with payment was received on October 3, 1991 as well as payment in full. This established that the Michigan system in place as of November 15, 1991 was the "principal place of business" system and has been continued each year thereafter.

s. The above method of fee collection was made in good faith with the understanding that same was in accord with the newly enacted SSRS which was to become effective on January 1, 1992.

4. At all times during my contacts with the Plaintiff, if any, I acted in good faith, within the scope of my authority and in my official capacity as a public employee of the State of Michigan and not in my personal capacity.

5. If sworn I can competently testify to the facts set forth in this Affidavit.

Further affiant sayeth not.

/s/ Thomas R. Lonergan, Director
Motor Carrier Regulation Division
Michigan Public Service Commission

Subscribed and sworn to before me this
9th day of October, 1995

/s/ Pamela A. Cabic
Notary Public, Eaton County, Michigan
My Commission Expires: 2/4/98

* * *

[ATTACHMENT NO. 2,
MICHIGAN INTERSTATE CAB CARD STAMP
APPLICATION, 1991 RENEWAL]

* * *

Instructions:

1. New applicant and ICC sub registrations — For a new application or an ICC sub registration you must file Form A in duplicate. The filing fee for a new application is $25. The filing fee for a sub registration is $10. ICC exempt applicants must file Form A-1 in duplicate. The filing fee for an exempt application is $25.

2. Cab Cards — ICC regulated carriers, place the identification stamp on Form D, Uniform Identification Cab Card, available from NARUC, P.O. Box 684, Washington DC 20044. Exempt carriers may place the identification stamp on Form D-1, Uniform Identification Cab Card, available from NARUC.

3. Expiration — Cab card stamps are issued effective February 1 of the year for which they are issued and expire on January 31 in the succeeding calendar year.

4. Cab card stamp fees — The cab card stamp fees are based on the state or province shown on the ICC certificate or permit as the carrier's base of operations. Please refer to the accompanying chart to determine the fees appropriate to your fleet. If your company is registered in a state or province which does not require the payment of a cab card stamp fee, you should still complete the form and order the appropriate number of cab card stamps. If the carrier address has changed, the

address must be changed at the ICC and a new certificate or permit issued by the ICC and filed with the State of Michigan.

5. Insurance — The State of Michigan **does not** require interstate or exempt carriers to file a current insurance certificate.

6. Return mailing address — If stamps are to be mailed to an address other than listed on line 4 of this application, please enter the mailing address on line 5.

7. Payment of fees — Make your check or money order payable to the State of Michigan. Funds must be in U.S. dollars. Payment of fees to accompany this application.

8. Mailing Address —

MICHIGAN DEPARTMENT OF COMMERCE
PUBLIC SERVICE COMMISSION
6545 MERCANTILE WAY
P.O. BOX 30221
LANSING, MICHIGAN 48909 - 7504

* * *

AFFIDAVIT OF JOE McDADE

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

JOE McDADE, being sworn, submits his affidavit in the above matter:

1. My name is Joe McDade. My business address is 10990 Roe Avenue, Overland Park, Kansas 66211. I am employed as Manager of Licensing for Plaintiff Yellow Freight System, Inc. ("Yellow"). I am authorized to submit this statement on behalf of my company in this matter.

2. My duties as Manager of Licensing involve securing compliance and payment by Yellow with the licensing, fee, and vehicle registration requirements of the various states. I have held the position of Manager of Licensing for the past seven years and have been employed by Yellow since 1982. I have day to day familiarity with the contents of this affidavit through my working responsibilities with Yellow.

3. I am the same individual who executed the verification of complaint in this matter on March 16, 1995. It is my understanding that this verification is attached to the complaint as filed with this court. I continue to verify that the facts set forth in the complaint are true and correct to the best of my own personal knowledge.

4. Yellow is a for-hire motor carrier which, as pertinent to this proceeding, performs transportation in interstate and foreign commerce under certificates and permits issued by the Interstate Commerce Commission ("ICC").

5. One of my duties with Yellow has been to direct and coordinate the payment by our company of fees charged to interstate motor carriers by the various states in connection with registration of either ICC operating authorities or proofs of

insurance. Standards for such registration and fees are prescribed by the ICC under a delegation of authority from Congress under 49 U.S.C. § 11506.

6. For years prior to 1994, regulations published by the ICC at 49 C.F.R. 1023 permitted states to charge fees of up to $10.00 per vehicle for each vehicle which an interstate motor carrier intended to operate within a particular state. During this time, the State of Michigan and most other states had procedures in place under which carriers such as Yellow would pay their fees on a calendar year basis by submitting registration forms and payment prior to the beginning of the calendar year in question. In the fall of 1990, for example, the State of Michigan sent us a "1991 Renewal" form for registering our interstate vehicles which served as an application to obtain 1991 "cab card stamps" for those vehicles. Those cab card stamps became effective as of January 1, 1991 and remained valid throughout the calendar year.

7. Attached as Exhibit A to this affidavit is a copy of the form which we received and returned to the Michigan Public Service Commission in connection with registering our interstate vehicles with Michigan for calendar year 1991. As noted on the form, 3,730 of the vehicles which we were registering with Michigan were commercially plated in either Illinois or Indiana. The policy of the State of Michigan at the time we filed this form was that vehicles commercially plated in Illinois or Indiana were not required to pay registration fees to Michigan. It was my understanding that this lack of a fee requirement arose from a reciprocity agreement among these three states. We also elected in that year to register five vehicles with Michigan which were commercially plated in Oklahoma. Michigan required us to pay a fee of $10.00 per vehicle for those five vehicles, apparently because no reciprocity agreement was in effect between Michigan and Oklahoma. We received our 1991 cab card stamps for all of the

vehicles which we registered on this form. Those vehicles were permitted to operate in Michigan throughout 1991 under the cab card stamps which we had obtained from the registration form attached as Exhibit A.

8. In late 1991, Congress enacted legislation which changed the system for state registrations by interstate carriers, to take effect beginning with calendar year 1994. This legislation altered the basic requirements for vehicle registration and directed the ICC to prescribe new standards for such registration. The ICC held proceedings to consider these new standards and issued decisions and specific regulations which established those standards. Notices of these proceedings were published in the Federal Register and all interested parties were afforded an opportunity to file comments. The ICC's decision issuing its final regulation was released on May 18, 1993. *Single State Insurance Registration*, 9 ICC 2d 610 (1993) ("*Single State*"). The ICC also issued a supplemental decision providing additional standards in *American Trucking Associations — Petition for Declaratory Order — Single State Insurance Regulation*, 9 ICC 2d 1184 (1993) ("*American Trucking*"). The ICC's decision in *American Trucking* was announced November 1, 1993, made available in written form on November 18, 1993 and served on November 22, 1993. Yellow was a party submitting comments in both of these proceedings.

9. The dispute with the State of Michigan and its agencies and employees which forms the basis for this proceeding arises from the directives imposed by Congress in the 1991 legislation establishing the maximum fees which could be charged by states for calendar years beginning in 1994. The statutory language directed the ICC to establish a fee system which would "result in a fee for each participating State that is equal to the fee, not to exceed $10.00 per vehicle, that such State collected or charged as of November 15, 1991."

49 U.S.C. § 11506(b)(2)(B)(iv). Yellow interpreted this language as limiting states to charging the fees they actually had assessed for the 1991 registration year, giving effect to any reciprocity agreements which the states may have had in place with respect to that year. The ICC's decision in *Single State* agreed with Yellow concerning giving effect to reciprocity provisions. The decision in *American Trucking* further agreed with Yellow that calendar year 1991 was the appropriate point of reference for determining the fees "charged or collected as of November 15, 1991" within the meaning of the statute.

10. Another change added to the state registration system beginning with calendar year 1994 was the implementation of a system by which carriers would submit their vehicle registrations and fee payments for all states to a single registration state. For Yellow, the appropriate registration state under this system was Kansas. During 1993, Yellow made inquiries with the State of Michigan to confirm that vehicles commercially plated in Illinois could be registered for Michigan operations in 1994 without a fee payment, in the same manner as had been the case for calendar year 1991. We were told, however, that Michigan did not agree with this position and was seeking to assess a full $10.00 per vehicle fee for our Illinois-based vehicles as to which we would have paid no fees for calendar year 1991.

11. On November 9, 1993, we submitted our fee payment to the State of Kansas containing fees for all states, including Michigan. The portion of our fees with respect to Michigan were paid under protest as set forth in my letter on that date to the Kansas Corporation Commission (Appendix B). As I indicated in that letter with respect to a state involving parallel issues, Indiana,[1] our entire line haul fleet at that time was based

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[1] Indiana has subsequently changed its position and now charges no fees for registration of Yellow's vehicles which are commercially

in Illinois. The vehicles in that fleet each were commercially plated in Illinois. None of these vehicles would have been subject to any fees under the fee arrangements which Michigan had followed for calendar year 1991 for vehicles commercially plated in Illinois. The total number of line haul power units commercially plated in Illinois as of January 1, 1994 was 3,759. We elected to register 3,353 vehicles for Michigan operations for calendar year 1994, paying $33,530.00 to the State of Kansas earmarked for this purpose.

12. On receiving our payment under protest with respect to Michigan and the other states indicated in my letter, the state of Kansas advised us that it was remitting the monies in question to the various states and that we should deal directly with those states to pursue our requests for refunds. On January 21, 1994, I submitted a letter request to the Michigan Public Service Commission for refund of the registration fees of $33,530.00 which were paid with respect to Michigan for calendar year 1994. The Michigan Public Service Commission refused to refund such fees.

13. On July 29, 1994, I executed a notice of claim for refund with respect to the 1994 fees for filing with the Michigan Court of Claims. That filing together with an acknowledgment from the court is attached as Exhibit B to the complaint in this matter.

14. With respect to calendar year 1995, Yellow and the State of Michigan continued their respective positions. Yellow's filing with the State of Kansas to register interstate vehicles for calendar 1995 included payments to Michigan of the $10.00 per vehicle fee which Michigan authorities were demanding. For 1995, our entire line haul fleet continued to be commercially plated in Illinois and similarly would have been

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plated in Illinois.

assessed no fees under the system which Michigan had imposed with respect to vehicles for calendar year 1991. As of January 1, 1995, Yellow's line haul power unit fleet consisted of 3,600 vehicles, each of which was commercially plated in Illinois. Yellow elected to register 3,342 vehicles with Michigan, paying $33,420.00 in registration fees earmarked for this purpose to the State of Kansas on October 20, 1994.

15. On December 1, 1994, I executed a notice of claim for refund in the amount of $33,420.00 with respect to vehicles registered for calendar year 1995. That claim was filed in the Court of Claims on December 15, 1994. A copy of that claim together with the court's acknowledgment of receipt is included in Exhibit B to the complaint in this matter.

16. All of Yellow's line haul power units continue to be commercially plated in Illinois. It is anticipated that issues with respect to the fees for these vehicles claimed by Michigan will continue to arise with respect to calendar year 1996 and subsequent years.

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

JOE McDADE, being sworn, states under oath that he has read the foregoing Affidavit and that the facts set forth in that Affidavit are true and correct to the best of his knowledge.

/s/ JOE McDADE

Subscribed and sworn to before me
this 23rd day of October, 1995.

/s/ Linda L. Harris, Notary Public
Johnson County, Kansas
My Commission expires: January 12, 1997

* * *

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

[Title omitted in printing]

OPINION AND ORDER

[Filed March 13, 1996]

FACTS

Plaintiff is a commercial hauler operating in interstate commerce throughout the United States. The State of Michigan has assessed a ten dollar ($10) charge, per vehicle, registration fee to Yellow Freight pursuant to 49 U.S.C. § 11506(c). Under this provision, states may assess the fee against interstate motor carriers only if such fee "is equal to the fee, not to exceed $10 per vehicle, that such state collected or charged as of November 15, 1991."

It is undisputed that, prior to the enactment of the above law, individual states were permitted to charge a fee to various carriers operating in interstate commerce. However, the state of Michigan had in place during calendar year 1991 a reciprocity agreement with various neighboring states, including Illinois, that waived imposition of the fee against motor carriers based in Michigan. It is undisputed that no registration fee was charged to Yellow Freight for calendar years 1990 and 1991 because Illinois had agreed to waive the fee for Michigan motor carriers.

In December, 1991, the Intermodal Surface Transportation Efficiency Act went into effect after being signed by the President. Under this new law, each motor carrier would pay all assessed fees through its home state. Each home state was required to assess and collect fees charged by other states on their behalf.

Pursuant to the above, Yellow Freight dutifully paid its registration fees to the State of Kansas, its home state. In addition, it paid a ten dollar ($10) per vehicle fee to the State of Michigan under protest for calendar year 1994. Likewise, fees were paid under protest for 1995 and 1996.

Prior to the end of 1991, Michigan changed the basis for determining reciprocity. Formerly, the state of licensure of the vehicle was used for the decision. For 1992 and beyond the actual home state of the company was used. In this case, Kansas became the state for determination of reciprocity. As such, the fee was collectible since Kansas had no reciprocity with Michigan.

DECISION

Under the single state registration system enacted in 1991, and effective November 15, 1994, individual states could charge a fee, which does not exceed ten dollars ($10) per vehicle, equal of the fee collected or charged to the carrier as of November 15, 1991. In this particular case, there is no dispute that Michigan did not charge any fee to Yellow Freight for calendar year 1991 due to the reciprocity agreement with other states. It is equally clear that a ten dollar ($10) fee was charged to those carriers registered in states that did not waive the fee for Michigan carriers.

Michigan, in anticipation of the new legislation, through the Public Service Commission, changed its method of

determining reciprocity prior to October, 1991. Under its new formula for reciprocity, a carrier's principal place of business would be used to determine reciprocity rather than the state that licensed the trucks owned by the carrier. In this case, Kansas now became the state to be used in determining reciprocity for Yellow Freight in place of Illinois. As the state of Kansas did not waive fees for Michigan vehicles, a ten dollar ($10) fee per truck was charged to Yellow Freight. This fee was properly paid by the Plaintiff on October 3, 1991, for registration in 1992.

The Defendant has taken the position that while it is true that no fee was charged or collected for 1991, there was a fee in place for 1992 that was charged prior to November 15, 1991. Therefore, Michigan was perfectly within its rights in charging the ten dollars ($10) in 1994 and beyond. Plaintiff, relying on the same language of the statute, believes that since no fee was charged in 1991, the fact that a fee for 1992 was put in place should not allow collection of the fee. The issue to be resolved is to determine the correct manner of interpreting this language.

Under the Interstate Commerce Clause, federal law supersedes the authority of individual states to regulate interstate commerce. In this regard, the Interstate Commerce Commission has regulatory authority over the implementation of the various acts of congress controlling the smooth flow of commerce between the states. In interpreting the intent of congress, this Court believes it should give great weight to the interpretation of the law applied to the statute by the agency charged with its enforcement. In this regard, this Court believes that the decision by the ICC in its decision in the *American Trucking* case is dispositive of the issues to be decided here. In *American Trucking*, the issue herein was specifically raised and decided. The commission held that: Yellow has raised the

issue of whether statutory language concerning the "fee charged or collected as of November 15, 1991," relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and so we find.

Based upon this interpretation, this court finds that the fees for 1994 though 1996 were improperly charged and are hereby ordered refunded.

Dated: March 13, 1996

/s/ William E. Collette
Circuit Judge

MICHIGAN COURT OF APPEALS

[Title omitted in printing]

OPINION

Decided Aug. 14, 1998

Before RICHARD ALLEN GRIFFIN, P.J., and McDONALD and O'CONNELL, JJ.

McDONALD, Judge.

Plaintiff, an interstate commercial carrier, brought this action asserting that defendants (the state) had collected registration fees pursuant to M.C.L. § 478.7(4); M.S.A. § 22.565(1)(4) in excess of the amount allowed by federal law, specifically the single-state registration system (SSRS). The Court of Claims, ruling on cross motions for summary disposition, agreed with plaintiff and granted its motion. The court entered judgment in favor of plaintiff for $99,580 plus interest and ordered that the state was barred from further collection of the registration fees until 49 U.S.C. "11506(c)(B)(iv) [sic] is rescinded." In Docket No. 194703, the state appeals this ruling as of right. In Docket No. 195564, plaintiff challenges the Court of Claims' denial of plaintiff's request for attorney fees. We affirm.

I

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA), P.L. 102-240, which

substantially amended 49 U.S.C. § 11506[1] and directed the Interstate Commerce Commission (ICC) to reform the licensing and registration system existing in the states. The statute mandated the creation of a new system, the SSRS. The statute required the ICC to prescribe amendments of the previously existing standards and set forth certain requirements for the new standards.[2]

The provision at issue, 49 U.S.C. §11506(c)(2)(B)(iv)(III), stated that the amended standards shall establish a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991."

The regulations promulgated by the ICC repeated the phrase "collected or charged as of November 15, 1991" without further explanation. See 49 C.F.R. § 1023.4(c)(4)(ii) (1995), later redesignated as 49 C.F.R. § 367.4(c)(4)(ii) (1996).

Because the statute essentially froze the fees a state could collect at the level existing as of November 15, 1991, the fee system in effect in this state at that time is pertinent to understanding the issues raised in this case. For the 1991 and 1992 registration years, the state collected fees by requiring interstate carriers to buy cab card stamps, also known as "bingo stamps," for each of the carrier's vehicles operating within the state. Each stamp cost $10. Pursuant to M.C.L. § 478.7(4); M.S.A. § 22.565(1)(4), the state had reciprocity agreements with certain other states so that each would waive the fees for

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[1] 49 U.S.C. § 11506 was amended and recodified and now appears at 49 U.S.C. § 14504. To avoid confusion, we will refer only to 49 U.S.C. § 11506.

[2] The registration system in effect before and after the ISTEA is explained in detail in *Nat'l Ass'n of Regulatory Utility Comm'rs v. ICC*, 309 U.S. App. D.C. 325, 41 F.3d 721 (1994).

vehicles from the other. The dispute arises in part because the state changed the method it used for determining reciprocity. For 1991, the state used the "base-plating system," which means that reciprocity was determined by the state of the vehicle's registration. In early 1991, the Public Service Commission (PSC) decided that it would quit using the base-plating system. Instead, for the 1992 registration year, fees and reciprocity were determined by the carrier's principal place of business. The revised renewal applications were mailed to all interstate motor carriers in September 1991. Importantly, the 1992 fees to be "collected or charged" by the state were based on a calendar year and therefore were not due and owing until January 1, 1992.

The change in the method of determining reciprocity resulted in a substantial increase in the fees plaintiff owed the state for the 1992 registration year. Under the base-plating system used for 1991, plaintiff paid the state $50 for five vehicles that were "base-plated" in Oklahoma, but paid nothing for 3,730 vehicles "base-plated" in Illinois and Indiana, because those states did not charge fees for vehicles based in Michigan. However, plaintiff's principal place of business is Kansas, which had no fee waiver agreement with Michigan. Therefore, for 1992, plaintiff paid $10 a vehicle, a total of $37,850 under the new system. Plaintiff sent, and the state received, the fees for 1992 before November 15, 1991. Plaintiff voluntarily paid its 1992 fees early in order to prevent any disruption of its trucking activities at the commencement of the January 1, 1992, calendar year.

II

The state argues the Court of Claims erred in determining that the state could not charge plaintiff $10 a vehicle. According to the state, it had "charged or collected" $10 a vehicle as of November 15, 1991. Plaintiff argued, and the

Court of Claims agreed, the statute was properly interpreted to refer to the fees charged or collected for the 1991 registration year. We affirm the Court of Claims' decision with regard to this issue.

The Court of Claims' opinion indicates its decision was based on the ICC's decision in *American Trucking Ass'n — Petition for Declaratory Order — Single State Ins. Registration*, 9 ICC2d 1184 (1993). In *American Trucking*, the ICC discussed various issues that had arisen under the SSRS. The plaintiff sought clarification from the ICC concerning the statutory language. The ICC summarized the issue raised by the plaintiff in the following way:

> Yellow [Freight] raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the "bingo" regulations, carriers filed applications between October 1 and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane.

The ICC resolved the matter as follows:

> Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.

The state argues the court should not have followed *American Trucking* because it does not comport with the unambiguous language of the statute and renders the November 15, 1991, deadline a "nullity." Therefore, the state argues the decision was not entitled to the deference usually afforded an agency's interpretation of a statute that the agency is charged with enforcing.

This Court has recognized that deference should be given to the interpretation of a federal statute by the agency administering it and that following an agency's interpretation promotes uniformity in application by the states. *Gibbs v. General Motors Corp.*, 134 Mich. App. 429, 432, 351 N.W.2d 315 (1984). Where a statute is silent or ambiguous regarding congressional intent, a reviewing court "should defer to a federal agency's construction of the statute unless the agency's interpretation is unreasonable." *Walker [illegible]son & Johnson Vision Products, Inc.*, 217 Mich. App. [illegible], 213, 552 N.W.2d 679 (1996), citing *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984).

Congress' intent concerning the allowable fee levels is not clear with respect to the pertinent period for fixing the fee levels. The phrase "as of November 15, 1991" denotes a period that ends on the specified date. However, the statute is silent regarding when the period begins. One could argue a state that had charged or collected fees from a carrier in any year before 1991 was entitled to continue to collect the fees under the SSRS. On the other hand, one could conclude, as the ICC did, that the relevant period was the registration year that included November 15, 1991. We do not believe Congress "had an intention on the precise question at issue. . . ." *Id.* at 843, n. 9. Because the statute does not reveal congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. *Walker*, supra.

We conclude that the agency's interpretation of the statute was reasonable. In our opinion, the agency acted reasonably in determining the fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991.

Plaintiff's voluntary payment of fees not due and owing does not affect our analysis.

The state also contends the Court of Claims' ruling applying the *American Trucking* decision by the ICC "effectively repeals existing reciprocity agreements and/or alters them to reinstate a previous basis for determining fee waivers thereunder[,]" and thereby "contravenes the Tenth Amendment."[3] This argument has no merit. We disagree with the premise of the state's argument, i.e., that the Court of Claims' decision repeals or alters any reciprocity agreements. Any effect on a state's ability to alter its reciprocity agreements is the result of Congress' decision to freeze fees at the level as of November 15, 1991. Congress has the authority to take this action under the Commerce Clause, U.S. Const., Art. I, § 8.

The state argues the language in the *American Trucking* decision by the ICC was not binding on the state because the notice of institution of declaratory action resulting in that decision did not indicate facts specific to Michigan. We disagree. The Court of Claims did not conclude that the ICC decision in *American Trucking* was binding on the state. However, the court could not properly disregard the agency's interpretation of a statute merely because the state did not

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[3] U.S. Const., Am. X states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

participate in the proceeding. The state has not provided, nor are we aware of, any authority holding that an alleged deficiency in the notice of institution of declaratory action affects judicial review of an agency's interpretation of a statute.

The state also suggests that states should not be required to consider reciprocity agreements in determining the amount of fees "charged or collected as of November 15, 1991." In *Single-State Ins. Registration*, 9 ICC2d 610 (1993), the ICC determined that states must consider the reciprocity agreements. The ICC's decision in this regard was upheld in *Nat'l Ass'n of Regulatory Utility Comm'rs v. ICC*, 309 U.S. App. D.C. 325, 41 F.3d 721 (1994). Although that decision is not binding on this Court, we find it persuasive and adopt its ruling with regard to this issue.

III

We also reject the state's argument that governmental immunity, M.C.L. § 691.1407; M.S.A. § 3.996(107), bars plaintiff's action. The wrong alleged by plaintiff does not fall within the definition of a tort. This action to recover fees paid in excess of the amount allowed by federal law is analogous to an action to recover illegal taxes. "The remedy to recover illegal taxes paid is in assumpsit for money had and received." *Service Coal Co. v. Unemployment Compensation Comm.*, 333 Mich. 526, 531, 53 N.W.2d 362 (1952), quoting *Salisbury v. Detroit*, 258 Mich. 235, 241 N.W. 888 (1932). An action in assumpsit for money had and received is not an action in tort. Therefore, governmental immunity from tort liability under M.C.L. § 691.1407; M.S.A. § 3.996(107) does not apply.

IV

The state also contends plaintiff was required to request a declaratory ruling from the PSC as a prerequisite to court review. We disagree. The state relies on both §§ 63 and 64 of

the Administrative Procedures Act, M.C.L. § 24.263; M.S.A. § 3.560(163) and M.C.L. § 24.264; M.S.A. § 3.560(164). However, neither section would support reversing the judgment entered in favor of plaintiff.

Plaintiff's action is not accurately characterized as simply an action for a declaratory judgment available under § 64. Rather, as previously discussed, the action was essentially an action in assumpsit for money had and received. Furthermore, only the validity or applicability of rules that had been formally promulgated as rules may be challenged in actions for declaratory judgments under § 64. See *Jones v. Dep't of Corrections*, 185 Mich. App. 134, 137, 460 N.W.2d 575 (1990). The state has not suggested that the collection of fees was pursuant to a rule that had been formally promulgated under the APA. Because plaintiff's action was not a challenge to the validity or applicability of a formally promulgated rule, § 64 of the APA does not require plaintiff to get a declaratory ruling as a prerequisite to judicial review.

To the extent that the state claims that plaintiff was required to get a declaratory ruling under § 63, we also find that section inapplicable. Section 63 indicates that the agency "may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency." Assuming plaintiff could have requested a declaratory ruling, § 63 does not require plaintiff to do so before seeking judicial review.

V

We next address the relief that the court awarded to plaintiff, specifically, a refund of $99,580, which is the amount collected for 1994, 1995, and 1996. Arguing that a refund is contrary to the United States Supreme Court decision in *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990), the state requests the remedy be

limited to prospective relief commencing at the time of "any final appellate decision" on the issue.

Contrary to the state's argument, we believe that *McKesson* indicates that a refund is an appropriate remedy in this case. In *McKesson*, the United States Supreme Court considered whether prospective relief was an adequate remedy for wholesale liquor distributors who sought a refund of excess taxes they had paid pursuant to Florida's excise tax scheme. The scheme was found unconstitutional because it discriminated against interstate commerce. In determining the appropriate remedy, the Court concluded that due process required more than prospective relief:

> The question before us is whether prospective relief, by itself, exhausts the requirements of federal law. The answer is no: If a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation. [*Id.* at 31.]

The state cites *McKesson* for its discussion of the "pass-on" defense to an action for a tax refund. See *McKesson*, supra at 47-48. The state suggests a refund is not necessary if the expense of the unlawfully collected fees was passed on to plaintiff's customers. However, the *McKesson* Court ultimately rejected the defense in that case, *id.* at 48- 49. The state has not cited any authority indicating that the pass-on defense has been adopted in this jurisdiction, and we decline to adopt it in this case.

The state also cites *LCI Int'l Telecommunications Corp. v. Dep't of Commerce*, 227 Mich. App. 196, 574 N.W.2d 710 (1997), as support for its argument that plaintiff should receive

only prospective relief. In *LCI*, this Court determined that the defendants had consistently misinterpreted a statute for over twenty years, resulting in improper assessments against telecommunications carriers. The Court held that its holding should be applied only prospectively, in part because the ruling was not "clearly foreshadowed." In the present case, the result was clearly foreshadowed by the ICC's decisions in *American Trucking* and *Single-State Registration*, which were issued in 1993, less than a year after the ICC adopted the SSRS.

The state also contends that, if this Court does not limit Yellow Freight to prospective relief, it should order a remand to the PSC to allow the state to change the fee schedule to retroactively surcharge carriers who benefitted from the state's misapplication of the SSRS. The state relies on language in *McKesson* suggesting that, as one of the alternatives to providing a refund to the aggrieved distributors in that case, Florida could assess and collect back taxes from the petitioners' competitors. *Id.* at 40. However, the adequacy of any remedy necessarily depends on the basis for relief. In *McKesson*, the petitioners were entitled to relief because a statute imposing an excise tax discriminated in favor of distributors of local products. The remedies the Court approved were ways Florida could undo the discriminatory effects of the statute and make the tax scheme valid under the Commerce Clause. In the present case, plaintiff is entitled to relief because the state collected fees contrary to a statute. Because the purpose of the relief in this instance is not to undo discriminatory effects, surcharging carriers who were allegedly undercharged is unrelated to providing plaintiff with an adequate remedy in this case. The only way to provide plaintiff with "meaningful backward-looking relief," *McKesson*, supra at 31, to undo the misapplication of the statute is to order a refund of the amounts

wrongfully collected.[4] We express no opinion whether the state may surcharge other carriers because that issue is not appropriately before us in the context of this case.

VI

In Docket No. 195564, plaintiff advances several issues relating to the court's denial of plaintiff's motion for attorney fees pursuant to 42 U.S.C. § 1988. Although the court did not explicitly rule on the merits of plaintiff's claim under 42 U.S.C. § 1983, we conclude that the denial of attorney fees was appropriate because the § 1983 claim was not viable against either the state agencies or the state officials.

Case law indicates plaintiff could not prevail in a § 1983 action against the state agencies. Section 1983 applies to "person[s]," and the United States Supreme Court has held that a state agency is not a "person" for the purposes of § 1983. *Hardges v. Dep't of Social Services*, 201 Mich. App. 24, 27, 506 N.W.2d 532 (1993), citing *Howlett v. Rose*, 496 U.S. 356 (1990), and *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989).

Plaintiff was not entitled to relief on the basis of its § 1983 claim brought against the state officials acting in their official capacity. Section 1983 claims seeking prospective injunctive relief may be brought against state officials acting in an official capacity. *Will, supra* at 71, n. 10; *Hardges*, supra. However, the United States Supreme Court has held that a state court cannot grant injunctive or declaratory relief under § 1983 in

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[4] The holding in *McKesson* is limited to situations in which a state places a taxpayer under duress to pay tax promptly when due and limits the taxpayer to challenging the tax after payment. The state does not suggest that plaintiff was given the opportunity to challenge the fees before payment and does not suggest that a distinction should be drawn in this context between the payment of fees and taxes.

state tax cases when an adequate legal remedy exists. *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm.*, 515 U.S. 582 (1995).

We are not persuaded by plaintiff's attempt to distinguish *Nat'l Private Truck* on the basis that the fees in this case were collected under federal law pursuant to a system implemented by the ICC. Plaintiff contends the principles of comity and federal deference to state authorities underlying the decision in *Nat'l Private Truck* are not relevant in this case. However, federal law does not require that states charge the fees, but rather sets forth the method and limits on states that choose to collect the fees. Plaintiff's contention, "No issues of state tax law or state tax administration are here involved," is disingenuous and does not provide a meritorious basis for distinguishing *Nat'l Private Truck*.

We also disagree with plaintiff's suggestion that the Supreme Court intended its decision in *Nat'l Private Truck* to be limited to taxes and therefore not apply to fees. On the basis of the principles of comity and federalism, the Supreme Court concluded that Congress did not intend § 1983 claims to be brought in state tax cases when an adequate state remedy is available. Those principles apply equally well when the revenue collection is in the form of a fee.

VII

The Court of Claims properly granted plaintiff's motion for summary disposition. The state was precluded from collecting fees from plaintiff in excess of the amount charged or collected for the 1991 registration year. Plaintiff is entitled to a refund of the amount improperly collected. We also affirm the Court of Claims' denial of plaintiff's motion for attorney fees pursuant to § 1988 because plaintiff had no viable § 1983 claim against any of the defendants.

Affirmed.

RICHARD ALLEN GRIFFIN, P.J., concurred.

CONCURRING/DISSENTING OPINION

O'CONNELL, Judge (concurring in part and dissenting in part.)

I respectfully dissent from part II of the majority opinion. I find no ambiguity in the statutory provision in dispute and accordingly would instruct the Court of Claims to apply the statutory language according to its plain meaning and not according to the ICC's strained construction.

The primary goal of statutory interpretation is to ascertain and give effect to legislative purpose. *Haworth, Inc. v. Wickes Mfg. Co.*, 210 Mich. App. 222, 227, 532 N.W.2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry Brokers, Inc. v. City of Warren*, 210 Mich. App. 304, 307, 532 N.W.2d 920 (1995). "If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted." *Dep't of Transportation v. Thrasher*, 196 Mich. App. 320, 323, 493 N.W.2d 457 (1992), aff'd, 446 Mich. 61, 521 N.W.2d 214 (1994).

The pertinent language in 49 U.S.C. § 11506(c)(2)(B)(iv)(III) provides for establishment of a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The majority reasons that this language calls for identifying a "pertinent period" ending November 15, 1991, but that it reveals no congressional intent concerning when this period begins. The majority then resolves this supposed ambiguity by concluding that the provision refers to fees charged for the registration year that includes November 15, 1991. However, this construction

disregards the word "collected," and broadens the specific reference, "as of November 15, 1991," to indicate the whole registration year that happens to include "November 15, 1991." This distortion of the plain wording of the statute is unnecessary and inappropriate. Legislative intent "is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v. General Motors Corp.*, 448 Mich. 147, 160, 528 N.W.2d 707 (1995). The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value. When a statute is clear on its face, judicial construction is unnecessary and inappropriate. *Thrasher, supra.*

As the majority states, it was the intent of Congress to "freeze fees at the level as of November 15, 1991." To determine the particulars of that intent, I would restore "collected" as the companion of "charged," and respect the specificity of "November 15, 1991." A court should presume that every word has some meaning and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc. v. Governor*, 217 Mich. App. 439, 457, 553 N.W.2d 7 (1996). Accordingly, I would read "fee . . . that such State collected or charged as of November 15, 1991" as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991.

The statute does not refer to a "period" ending on November 15, but simply to that specific date. It does not refer only to the fee structure in place at the specified time, but to fees "collected or charged" at that time, identifying fees payable to the state, or already paid to the state (for whatever the reason), as establishing the level at which the fees are to be frozen. The words "as of" in reference to a specific date clearly refer to the status quo in place on that date. Thus, the congressional intent to freeze fees at the rates "collected or

charged as of November 15, 1991" plainly recognizes for this purpose both the rates actually charged and those according to which fees were actually collected on that date.

Accordingly, because the state had collected plaintiff's fees as envisioned for the 1992 registration year "as of November 15, 1991," 49 U.S.C. § 11506(c)(2)(B)(iv)(III), by its plain terms, allows the state to continue to assess plaintiff's fees according to the new scheme under which plaintiff had tendered payment by November 15, 1991.

At stake here is the state's interest in collecting higher fees from plaintiff in accordance with recent changes in the state's regulatory scheme, and plaintiff's interest in avoiding those fee increases and continuing to operate under the old scheme. Each party argues that the other stands to receive a windfall if the other's interpretation of the statutory language at issue is adopted. That statutes have the effect, intentionally or not, of benefitting some and burdening others is not a matter of dispute, and the Intermodal Surface Transportation Efficiency Act is no exception. Under any interpretation of 49 U.S.C. § 11506(c)(2)(B)(iv)(III), someone will win and someone will lose. Although the state's reading of the statute to cause plaintiff to have to continue to pay much higher fees simply because plaintiff chose to pay 1992 fees before November 15, 1991, may seem a harsh result, the result is equally harsh if the state is obliged to forgo receiving the higher revenues to which its own laws entitle it simply because the federal statute articulated a date of late 1991 instead of early 1992. For these reasons, I would avoid any concern for who benefits, or who gets burdened, from 49 U.S.C. § 11506(c)(2)(B)(iv)(III) and simply give effect to its plain language.

Although I express no disagreement with the reasoning of part V of the majority opinion, I do not join in that part because it concerns the relief to which plaintiff is entitled, where under

my reading of the statute in question plaintiff is not entitled to any relief. I concur with parts III, IV, and VI.

MICHIGAN SUPREME COURT

[Title omitted in printing]

OPINION

Docket No. 113656.

Calendar No. 11.

Argued Oct. 11, 2000.

Decided May 15, 2001.

WEAVER, C.J.

This case presents an issue of statutory interpretation. Plaintiff, Yellow Freight System, Inc., alleges that defendants collected registration fees in excess of the amount allowed under the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), 49 U.S.C. 11506, which restricts a state's registration fees to an amount "equal to the fee . . . that such state collected or charged as of November 15, 1991," 49 U.S.C. 11506(c)(2)(B)(iv)(III). Specifically, plaintiff contends that in determining the amount of the fee charged or collected on November 15, 1991, one must consider the effect that any then existing reciprocity agreements had on the fees.

We reject plaintiff's claims and hold that in determining the "fee . . . collected or charged" under 49 U.S.C. 11506(c)(2)(B)(iv)(III), Michigan's reciprocity agreements are irrelevant. We reverse the Court of Appeals decision affirming the Court of Claims order for summary disposition in favor of plaintiff and remand this case to the Court of Claims for further proceedings consistent with this opinion.

Congress has the power to "regulate Commerce . . . among the several States" and "[t]o make all Laws which shall be necessary and proper for carrying into Execution" that power to regulate commerce. U.S. Const., art. I, § 8. Under the Commerce Clause, states can impose significant regulatory burdens on interstate motor carriers only when authorized to do so by Congress. *Michigan Pub. Utilities Comm. v. Duke*, 266 U.S. 570, 577. Over the years Congress has authorized the states to require registration of interstate motor carriers, subject to the supervision of the Interstate Commerce Commission. See Motor Carrier Act of 1935, P.L. 74-265, 49 U.S.C. 301 *et seq*. In 1991, Congress passed the ISTEA,[1] which directed the Interstate Commerce Commission (ICC) to restructure the then existing regulations governing vehicle registration and registration fees. 49 U.S.C. 11506. As a result, the ICC issued the "single state" registration system (SSRS) in 1993, 49 C.F.R. 1023.[2]

A brief overview of the previous interstate motor carrier registration system is helpful in understanding the dispute now before this Court. Before 1991, states could require interstate motor carriers to annually register and pay fees on each vehicle

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[1] Provisions similar to those in this section are now contained in 49 U.S.C. 14504.

[2] This was redesignated in 1996 as 49 C.F.R. 367.

that operated within its borders. Thirty-nine states, including Michigan, elected to participate in a "bingo card" system.[3] Under the "bingo card" system interstate motor carriers attached a "bingo card" to each of their motor vehicles. States through which the vehicle traveled then issued each vehicle a registration "stamp" which was placed in a designated area on the bingo card. Participating states were allowed to charge no more than $10 per stamp.

While operating under the prior "bingo card" registration system, some states entered into reciprocity agreements, under which a state would discount or waive the registration fee for carriers based in the other's state. The motor carrier's principal place of business was most commonly used as the basis for determining reciprocity. Michigan, however, initially based its reciprocity agreements on the state in which the vehicle was "base-plated," i.e. where it was registered or license-plated.[4]

Seeking to "benefit the interstate carriers by eliminating unnecessary compliance burdens" and "to preserve revenues for the states which had participated in the bingo program," Congress replaced the old system by enacting the ISTEA.[5] The

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[3] The "bingo card" system served three main purposes: (1) to make it easier to determine whether a specific vehicle had been registered by simply looking at the "bingo card," (2) to ensure compliance by interstate motor carriers to register all vehicles in operation, and (3) to prevent carriers from operating uninsured vehicles.

[4] In other words, Michigan would waive its registration fee for vehicles base-plated in a state that waived its fee for vehicles that were base-plated in Michigan.

[5] H. R. Conf. Rep. No. 102-404, 102nd Cong., 1st Sess. 437 (1991), reprinted in 1991 U. S. Code Cong. & Admin. News, 1526, 1679, 1817.

SSRS was intended to serve as the sole avenue for state registration of interstate carriers.[6] *Nat'l Ass'n of Regulatory Utility Comm'rs v. Interstate Commerce Comm.*, 309 U.S. App. D.C. 325, 41 F.3d 721 (1994). Under the SSRS a motor carrier registers annually with only one state. This "registration state" is responsible for collecting the per-vehicle fees and distributing them to any participating states through which the carrier runs its motor vehicles. 49 U.S.C. 11506(c)(2)(A)(iii).

The section of the ISTEA at issue in the present case is subsection 11506(c)(2)(B)(iv). It provides that each state "shall establish a fee system" that "result[s] in a fee for each participating state that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. . . ."

In 1991, before the implementation of the SSRS, the Michigan Public Service Commission (MPSC) altered its reciprocity agreements. The MPSC adopted the more common "place of business" method of determining reciprocity, instead of the "base-plated" system that the MPSC had been using. This change was scheduled to become effective in February 1992. The MPSC mailed renewal applications reflecting this change to all interstate motor carriers, including the plaintiff, in September 1991. Plaintiff paid its 1992 fees[7] in September of

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[6] Participation in the SSRS was limited to the thirty-nine states that had elected to participate in the "bingo card" program. 49 U.S.C. 11506(c)(2)(D).

[7] At that time plaintiff's principal place of business was in Kansas, and it had 3,730 vehicles base-plated in Illinois and Indiana. Under Michigan's old reciprocity agreements, Michigan's fees for those 3,730 vehicles base-plated in Illinois and Indiana would have been waived. However, after Michigan changed its method for determining reciprocity to one based on a company's principal place of business, Plaintiff was required to pay a $10 vehicle registration fee for each of the 3,730 vehicles. Thus, rather than paying nothing under the old reciprocity method, plaintiff was required to pay $37,300 annually under Michigan's new system.

1991, under protest. Subsequently, plaintiff instituted this litigation.

Plaintiff contended that Michigan could not alter its reciprocity agreements, arguing that under the federal statute those agreements were frozen at their November 15, 1991, levels. Ruling on cross motion, the Court of Claims agreed with plaintiff and granted its motion, in part, for summary disposition.[8] In a two-to-one decision, the Court of Appeals affirmed the Court of Claims ruling. 231 Mich. App. 194, 585 N.W.2d 762 (1998). This Court granted leave to appeal, 461 Mich. 1009, 611 N.W.2d 796 (2000).

II

There is no dispute that 49 U.S.C. 11506(c)(2)(B)(iv)(III) froze the registration fees that a state can charge as of November 15, 1991. The parties dispute the proper interpretation of a key phrase in that section of the ISTEA: "equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The fundamental question before us is whether Michigan's reciprocity agreements should be considered in determining what fees were charged or collected as of November 15, 1991. We conclude that under the plain language of the statute, reciprocity agreements are not relevant in making that determination.

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[8] Plaintiff's complaint also sought attorney fees under 42 U.S.C. 1988. The Court of Claims did not grant this relief, and plaintiff has not appealed that decision to this Court.

A

This is an issue of first impression for this Court; nor have any other state courts addressed it. The only court that has considered it is the District of Columbia Circuit Court of Appeals, *Nat'l Ass'n of Regulatory Utility Comm'rs*, *supra*. That court followed the ICC's decision[9] to ban states from charging registration fees in excess of preexisting reciprocal discounts, saying:

> [W]e think the Commission was correct in concluding that the plain language of the statute precludes petitioners' interpretation. It does not matter whether Congress actually focused on the reciprocal discount practice or even was aware of it. Nor is it of any significance that the Commission initially misread the statute; that is what comment periods are for. *Id.*, at 729.

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[9] The ICC has taken varying positions on this issue. In its Advance Notice of Proposed Rulemaking, 57 Fed. Reg. 20,072 (1992), and its Notice of Proposed Rulemaking, 58 Fed. Reg. 5951 (1993), the ICC found that the reciprocity agreements were made voluntarily, and that there was no good reason for the ICC's involvement in them. The ICC had noted that "it might place a heavy administrative burden on a registration State were we to require that it collect from different carriers different fees from the same State depending on the various reciprocal agreements negotiated by the various states in which each carrier operates." 9 I.C.C.2d 610, 617 (1993).

However, the ICC subsequently reversed its position, and now says "we have concluded that participating States must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of Nov. 15, 1991, as required by § 11506(c)(2)(B)(iv)." *Single State Ins. Registration Exparte No. MC-100 (Sub-No. 6)*, 9 I.C.C.2d 610, 618-619 (1993).

We are not bound to follow that decision,[10] and, for the reasons given below, we do not agree with the federal court's decision to defer to the ICC's interpretation of the ISTEA.

B

Plaintiff contends that in interpreting the ISTEA we must give deference to the ICC's interpretation. Because the issue is the interpretation of a federal statute and the deference due a federal agency's construction of that statute, we will apply the rules of construction set out by the federal judiciary.[11] The

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[10] Michigan adheres to the rule that a state court is bound by the authoritative holdings of federal courts upon federal questions, including interpretations of federal statutes. See *Bement v. Grand Rapids & Indiana R. Co.*, 194 Mich. 64, 160 N.W. 424 (1916), and *In re Hopps Estate*, 324 Mich. 256, 36 N.W.2d 908 (1949). However, where there is no United States Supreme Court decision upon the interpretation in question, the lower federal courts' decisions, while entitled to respectful consideration, are not binding upon this Court. See *Winget v. Grand Trunk W. R. Co.*, 210 Mich. 100, 117, 177 N.W. 273 (1920), *Schueler v. Weintrob*, 360 Mich. 621, 105 N.W.2d 42 (1960), and 21 CJS, Courts, § 159, pp. 195-197.

[11] This Court has not previously determined what deference the courts of this state owe to a federal agency's interpretation of a federal statute. However, in that circumstance the Court of Appeals has applied the federal standards of deference as set out in *Chevron*, supra at 2778. See *Walker v. Johnson & Johnson Vision Products, Inc.*, 217 Mich. App. 705, 713, 552 N.W.2d 679 (1996), *Gibbs v. General Motors Corp.*, 134 Mich. App. 429, 432, 351 N.W.2d 315 (1984), and 231 Mich. App. at 200, 585 N.W.2d 762. This is also the approach taken by several other state courts. See for example: *Totemoff v. State*, 905 P.2d 954, 967 (Alaska, 1995), *Delorme v. North Dakota Dep't of Human Services*, 492 N.W.2d 585, 587, n. 2 (N.D., 1992), *Rodriguez v. Perales*, 86 N.Y.2d 361, 367, 657 N.E.2d 247, 633 N.Y.S.2d 252 (1995), and *Bell Atlantic Mobile, Inc. v. Dep't*

seminal case is *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837. There the United States Supreme Court established that a court must first determine whether the statute's meaning is clear; if so, then the court must apply the statute as written. If the statute is ambiguous, then the court must give deference to the agency's interpretation.

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. *Id.* at 842-843.

Here we find that the plain meaning of the terms of the ISTEA is clear, and we apply the statute as written. Because

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of Public Utility Control, 253 Conn. 453, 470, 754 A.2d 128 (2000).

we find that the statute is not ambiguous,[12] we need not proceed to the second step of *Chevron, supra*, and we do not reach the agency's interpretation.

C

The question before us is whether any then-existing reciprocity agreements should be considered when determining what fee the state charged or collected as of November 15, 1991. The ISTEA itself refers only to the fee collected or charged, and contains no reference to reciprocity agreements. 49 U.S.C. 11504(c)(2)(B)(iv)(III) directs the ICC to "establish a fee system" that "result[s] in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The new "fee system" is based not on the fees collected from one individual company, but on the fee system that the state had in place on November 15, 1991. We must look not at the fees paid by plaintiff in any given year, but at the generic fee Michigan charged or collected from carriers as of November 15, 1991.

To determine what registration fee Michigan charged on November 15, 1991, we examine M.C.L. § 478.7(4); MSA 22.565(1)(4) in the Motor Carrier Act. Since 1989 that statute has provided for a fee of $10 to be charged for those motor carrier vehicles operating in Michigan and licensed in another state or province of Canada:

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[12] The dissent contends that the statute is ambiguous, asserting that this is demonstrated by "the several interpretations of its wording advanced by the parties." If the parties' conflicting interpretations were the measure of a statute's ambiguity, then almost every statute litigated would be deemed ambiguous. A statute is not ambiguous because it requires careful attention and analysis.

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00.

The same statute, M.C.L. § 478.7(4); MSA 22.565(1)(4), also gives the commission the ability to waive the $10 fee under certain circumstances:

> The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

Thus, under M.C.L. § 478.7(4); MSA 22.565(1)(4), the fee charged as of November 15, 1991, was $10. While that fee may be waived, and thus not "charged or collected," *for a particular carrier* under a reciprocity agreement, such voluntary agreements to waive the fee that happen to benefit a particular carrier do not affect the *generic* per vehicle fee in place on November 15, 1991. As stated, the clear focus of 49 U.S.C. 11506(c)(2)(B)(iv)(III) is on the generic "fee" that Michigan charged or collected as of November 15, 1991, and not on whether that fee was charged to or collected from a particular carrier.

The ICC's position that "participating States must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of Nov. 15, 1991, as required by § 11506(c)(2)(B)(iv),"[13] added a concept not

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[13] *Single State Ins. Registration Exparte No. MC-100 (Sub-No. 6)*, 9 I.C.C.2d 610 (1993).

within the express language of the statute. It added consideration of voluntary agreements between the states to waive or reduce the fees imposed. It is not for the ICC, or this Court, to insert words into the statute.

III

We hold that Michigan's reciprocity agreements are not relevant in determining what fee was "charged or collected" as of November 15, 1991. The lower courts erred in granting summary disposition for plaintiffs. We reverse the Court of Appeals decision, and remand this case to the Court of Claims for further proceedings consistent with this opinion.

CORRIGAN, C.J., and TAYLOR, YOUNG, and MARKMAN, JJ., concurred with WEAVER, J.

DISSENTING OPINION

MARILYN J. KELLY, J. (dissenting).

I disagree with the majority's conclusion that reciprocity agreements are not relevant in determining the registration fees that Michigan charged under the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), 49 U.S.C. 11506.[1] One such agreement waived registration fees for vehicles licensed in Illinois, including plaintiff's vehicles, so that no fee was collected or charged within the meaning of the statute. Consequently, I would affirm the decisions of the Court of Appeals and the Court of Claims.

The ISTEA replaced the bingo card system of registering interstate motor carriers with a single state registration system. *Nat'l Ass'n of Regulatory Utility Comm'rs v. Interstate Commerce Comm.*, 309 U.S. App. D.C. 325, 328, 41 F 3d 721

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[1] The ISTEA now appears at 49 U.S.C. 14504.

(1994). Under the ISTEA system, a state can charge a fee "that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. 11506(c)(2)(B)(iv)(III). The question in this case is what effect reciprocity agreements have on determining the fee that Michigan can charge under the single state registration system.

As an initial point, I disagree with the majority's conclusion that the meaning of the language in the statute is plain, reasonably susceptible of only one interpretation. Rather, I find it ambiguous. A statute is ambiguous when reasonable minds could differ as to its meaning. *In re MCI Telecommunications Complaint*, 460 Mich. 396, 411, 596 N.W.2d 164 (1999). That the ISTEA is ambiguous as regards the reciprocity agreements is demonstrated by the several interpretations of its wording advanced by the parties and by justices on this Court. The language of the statute supports both positions, allowing for opposing and similarly plausible constructions. Despite careful attention and analysis, reasonable minds can and do differ with respect to the statute's meaning concerning reciprocity agreements.

Alternatively, if the statute's language were plain, the meaning of the words "collected or charged" must lead to a result opposite that reached by the majority. The majority concludes that Michigan was entitled to charge plaintiff a registration fee, but the majority's interpretation of the ISTEA depends on addition to the statute of words not present there. Whether the state of Michigan could have collected or charged a "generic" per vehicle fee is not pertinent. The statute specifies "fees . . . collected or charged as of November 15, 1991." It does not say "fees that the state could have collected or charged."

While the ISTEA does not expressly make reference to reciprocity agreements, the fee system in place on November 15, 1991, does. MCL 478.7(4); MSA 22.565(1)(4) provides:

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

A plain reading of this provision leads to the conclusion that reciprocity agreements are an inherent part of the state's registration fee system. The generic fee levied under the statute is not absolute, but subject to reciprocity agreements that waive the fee. Thus, the fee charged as of November 15, 1991, was $10.00, unless a reciprocity agreement pertained. Voluntary agreements to waive the fee are relevant in determining the per vehicle fee system in place on November 15, 1991, as well as the fee collected or charged pursuant to that system.

The parties do not dispute that Michigan had a reciprocity agreement with Illinois that, by its terms, waived Michigan registration fees for interstate motor carriers licensed in Illinois. Pursuant to the agreement, the state did not charge registration fees for plaintiff's vehicles in 1990 and in 1991. It was not until Michigan revised its reciprocity system in 1991 that it charged plaintiff a registration fee.

This change in the reciprocity system did not become effective until the 1992 registration year. Plaintiff was not charged a registration fee in Michigan, nor was one collected

from it in Michigan for the 1991 registration year. The fact that the state had a right to or could have charged a "generic" registration fee does not change the fact: it did not charge plaintiff a fee until the 1992 registration year.

The majority's characterization of the language of the statute as "plain" is belied by the fact that the majority is obliged to construe the phrase "collected or charged" to reach its result. Only a strained reading of "collected or charged" leads to the conclusion that the state charged a fee when it did not do so. That the statute does not expressly mention reciprocity agreements does not change the fact that reciprocity agreements were an inherent part of the fee system in place on November 15, 1991. In this case, the reciprocity agreement with Illinois in effect during the 1991 registration year caused Michigan to waive the fees it might have imposed under M.C.L. § 478.7; MSA 22.565(1). As a consequence, no fees had been "collected or harged as of November 15, 1991."

The Court should give deference, as did the District of Columbia Circuit Court of Appeals,[2] to the Interstate Commerce Commission's construction of the language in question, because it is based on a permissible construction of the ISTEA. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-844 (1984). It should affirm the decisions of the Court of Appeals and the Court of Claims in favor of plaintiff.

MICHAEL F. CAVANAGH, J. (dissenting).

I disagree with the majority's conclusion that the relevant provision of the federal Intermodal Surface Transportation Efficiency Act (ISTEA), 49 U.S.C. 11506(c)(2)(B)(iv)(III), is

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[2] *Nat'l Ass'n of Regulatory Utility Comm'rs, supra.*

unambiguous and that this Court is free to decide that the section does not take into account reciprocity agreements. Rather, I conclude that this provision is ambiguous, and that the Interstate Commerce Commission (ICC) has permissibly construed it to take into account reciprocity agreements. Under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), then, this Court should defer to the ICC's interpretation of that provision. I, therefore, would affirm the judgment of the Court of Appeals, and must respectfully dissent.

In this case, the Court is called on to review a federal statute that was administered by the ICC when this case arose.[1] As the majority points out, under the Supreme Court's decision in *Chevron*, when a court reviews an agency's construction of a statute the agency administers, the court faces a two-part inquiry. First, the court must determine whether the statute clearly and unambiguously expresses the legislative intent. If so, it then must give effect to the statute as written. However, if the statute is not clear and unambiguous, the court "does not simply impose its own construction on the statute," but instead reviews whether the agency has permissibly construed the statute. If it has, the court should defer to the agency's construction. *Chevron* at 842-843. As alluded, the ICC, in *Single State Insurance Registration*, 9 I.C.C.2d 618, 618-619 (1993), construed the statute in question to take into account reciprocity agreements that exempted some interstate carriers from state fees, a conclusion opposite to that reached by the majority.

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[1] The ICC was abolished in 1996, and the references to the ICC in the governing statute, which was recodified, were changed to refer to the Secretary of Transportation. See 49 U.S.C. 14504; see also PL 104-88, 109 Stat. 803, Tit. I, § 103.

To determine whether a statute clearly and unambiguously expresses legislative intent, courts begin with the statutory language. If the words of a statute are clear and unambiguous, the court must apply them as written, and no further judicial construction is required or permitted. See, e.g., *Tryc v. Michigan Veterans' Facility*, 451 Mich. 129, 135, 545 N.W.2d 642 (1996). However, when there can be reasonable disagreement over a statute's meaning, see *People v. Adair*, 452 Mich. 473, 479, 550 N.W.2d 505 (1996), or, as others have put it, when a statute is capable of being understood by reasonably well-informed persons in two or more different senses, that statute is ambiguous. See 2A Singer, Statutes & Statutory Construction (6th ed.), § 45.02, pp. 11-12. For example, this Court has concluded that statutes have been ambiguous when one word in the statute has an unclear meaning, see *Perez v. Keeler Brass Co.*, 461 Mich. 602, 610, 608 N.W.2d 45 (2000), when a statute's interaction with another statute has rendered its meaning unclear, see *People v. Denio*, 454 Mich. 691, 699, 564 N.W.2d 13 (1997), or when application of the statute to facts has rendered the correct application of the statute uncertain, see *Elias Bros. v. Treasury Dep't*, 452 Mich. 144, 150, 549 N.W.2d 837 (1996).

In this case, the majority concludes that the governing ISTEA provision is plain and unambiguous. In the words of our prior decisions, then, the majority concludes that there cannot be reasonable disagreement over the statute's meaning, and that reasonably well-informed people cannot understand the statute in two or more different senses. Before amendment, the governing section provided that the ICC, and through it, states

> shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. . . . [49 U.S.C. 11506(c)(2)(B)(iv).]

I cannot agree that the meaning of this language is clear and unambiguous. Rather, it is subject to reasonable disagreement.

The majority concludes that the fee "collected or charged" refers only to the fee system a state had in place on November 15, 1991, and that this is clear from the plain meaning of § 11506(c)(2)(B)(iv). See op. at 33, 627 N.W.2d at 242. However, the conclusion that the fee "collected or charged" refers only to the fee system requires that "collected or charged" include the possibility that the fee "charged" can be simultaneously "waived." *Id.* at 33, 627 N.W.2d at 242. Otherwise, there would be no question that the state had not collected or charged anything from plaintiff until the changes in the reciprocity system became effective in 1992, after the cutoff date provided in § 11506. The conclusion that a fee can be "charged," yet concurrently "waived," though, is not consistent with this Court's approach to plain language.

When construing a statute according to its plain language, unless the statute itself dictates otherwise, this Court generally turns to dictionary definitions of the statutory terms to find those terms' ordinary and generally accepted meanings. See, e.g., *Denio* at 699, 564 N.W.2d 13. Applying this approach to

the instant case calls the majority's conclusion that a fee can be simultaneously "charged" and waived into question. "Charge" is defined variably as (1) "To hold financially liable; demand payment from," (2) "To demand or ask payment," (3) "A financial burden, as a tax or lien," (4) "To set or ask (a given amount) as a price," (5) "Expense; cost," or (6) "The price set or asked for something." *The American Heritage Dictionary* (2d College ed, 1982).

The problem in this case is that the ordinary and generally accepted meanings of the term "charge" do not dictate the majority's conclusion. Rather, the definitions of "charge" present a spectrum of concepts ranging from those that might encompass the majority understanding that a fee can be "charged" but concurrently "waived" — definitions 4, 6, and arguably 5 — to those that do not encompass that understanding because they require that the charge be a "demand" or a "burden." Definitions 1, 2, and 3 do not support the majority's conclusion because, under those meanings of "charge," the state would have to waive a fee, yet also hold a carrier financially liable for it, or demand or ask for payment of a fee that had been waived. Similarly, if a fee has been "waived," it is not a financial burden on the party responsible for the fee. In this case, plaintiff was not made financially liable for, or financially burdened with, the waived fee, and the state did not demand the waived fee before November 15, 1991. Thus although several accepted definitions of "charge" support the majority conclusion, several others weigh against it.

As mentioned above, the meaning of a facially unambiguous term can be ambiguous in certain circumstances. See *Denio* at 699, 564 N.W.2d 13; *Perez* at 610, 608 N.W.2d 45. Thus, although "charged" may not at first blush appear ambiguous, in the context of a fee that was established in a fee

system, but never demanded because of a reciprocity agreement, "charged" is ambiguous because the fee may or may not fit the definition of a fee that is "charged." If the statutory term "charged" is narrow and requires a demand for payment, the state had not charged plaintiff the fees before November 15, 1991, and cannot charge plaintiff for later years. On the other hand, if "charged" is broad and requires only the setting of a fee, the state had charged the fee by the cutoff date, and plaintiff cannot avoid payment. Compare *Perez* at 610, 608 N.W.2d 45 ("refuses" could have a broad or narrow meaning).

Although it does so without explanation, the majority chooses the latter meaning, concluding that even when the fee was waived for particular carriers, it still had been charged in general. Op. at 33, 627 N.W.2d at 242. I do not contend that the majority has chosen the wrong definition of "charge," or that its conclusion about § 11506's meaning is unreasonable. However, for the majority to come to its conclusion, it had to resolve the ambiguity surrounding the meaning of the statutory term "charged," specifically, whether "charged" was used in its broad or narrow sense.[2] Normally, this Court has a duty to

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[2] To conclude that the fee "charged" refers only to the fee set by the fee system, the majority must nevertheless conclude that "charged" is broad, meaning only that the state "set a price" for carriers but did not hold a carrier liable for that price. Such an understanding comports only with definitions 4 and 6 above, but not the narrower meaning of "charge" in definitions 1, 2, and 3. Otherwise, the fee "charged" could refer to only a particular fee and not the system itself.

Further, if the majority is correct that the fee charged refers only to the fee system in place, but not the fees charged of particular carriers, then apparently Michigan could waive fees for every carrier operating in the state, under reciprocity agreements or not, but nevertheless continue to be said to "charge" a generic fee. In such a scenario, the

make such a decision. In this case, however, the different possible meanings of "charged" present an ambiguity in § 11506. Under *Chevron*, rather than this Court imposing its own construction on the statute, we must consider whether the ICC, the agency responsible for administering this statute and which has already resolved this ambiguity in § 11506, did so permissibly.

I conclude that the ICC did permissibly construe the statute, and, therefore, I would defer to that agency. In *Single State*, the ICC considered whether the freeze on registration fees enacted through the ISTEA should take reciprocity agreements into account. It decided that the ISTEA does take reciprocity agreements into account when freezing the fees that states "charged." Thus, an interstate carrier that was not charged any fees before November 15, 1991, because it was operating under a reciprocity agreement, could not be charged fees after that time. See *Single State*, supra at 617-619. This interpretation evidences that the ICC preferred the narrow approach to "charged," concluding that an interstate carrier had not been "charged" a registration fee unless a state had made a demand for the fee, or unless the carrier had been held financially liable for the fee. Under reciprocity agreements, states did not make demands for fees, and did not hold carriers liable for fees. Hence, carriers operating under those agreements were not "charged" before the cutoff date, and could not be charged after it. Though this Court may not prefer the ICC's interpretation of

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majority would apparently conclude that Michigan "charged" a fee even though it held no carrier financially liable for any fee.

Again, there is room for reasonable disagreement over the proper understanding of these statutory terms. That room for disagreement, though, indicates that we should defer to the ICC understanding.

§ 11506 or the narrow approach to the term "charged," in light of the different possible meanings of the statute, the ICC approach is certainly a permissible construction. I would, therefore, defer to that agency's interpretation of this section.

In sum, I disagree with the majority's conclusion that 49 U.S.C. 11506 is not reasonably subject to different understandings. Whether the statutory term "charged" is understood narrowly or broadly affects this statute's meaning. Because the statute can be understood differently, this Court's only role is to consider whether the federal agency responsible for administering this statute, which has already considered the question before this Court, permissibly answered that question. The ICC took a narrow view of the meaning of "charged," but nevertheless a view that is supported by § 11506. I would defer to that agency's view and, therefore, must respectfully dissent.